IN THE
SUPREME COURT OF MISSOURI

No. SC93439

ST. LOUIS COUNTY, MISSOURI, *et al.*,

Plaintiffs/Appellants,

v.

STATE OF MISSOURI, *et al*,

Defendants/Respondents.

Appeal from the Circuit Court of Cole County,
The Honorable Patricia S. Joyce
Cause No. 12AC-CC00801

Respondents' Brief

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ATTORNEYS FOR RESPONDENTS

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Jurisdictional Statement

Appellants base their assertion of jurisdiction in this Court on their claim that §§ 57.278 and 57.280, creating the Deputy Sheriff Salary Supplementation Fund, are unconstitutional as an improper delegation of legislative authority to the Missouri Sheriff Methamphetamine Relief Taskforce (MoSMART) in violation of Art. III, § 1 of the Missouri Constitution.

But this relates only to Count I of plaintiffs' four count petition. And the actual constitutional validity of the statute is not at issue in this appeal—only whether dismissal of their claim was proper due to lack of standing and sovereign immunity.

Statement of Facts

In 2008 the General Assembly passed HB 2224 which enacted §§ 57.278 and 57.280 RSMo. This created within the state treasury the Deputy Sheriff Salary Supplementation Fund (Fund). The Fund is derived from moneys collected from a $10 charge for service of summons, writs, subpoenas or other court orders. The Fund is to be used only for the supplementation of salaries and benefits of county deputy sheriffs. § 57.278.1 RSMo.

Prior to the instant litigation, St. Louis County and its chief executive[1] challenged the validity of this statute claiming that it violated several provisions of the Missouri Constitution. Judgment was entered against the County and it appealed on one of its theories. This Court affirmed the judgment of the circuit court, holding that the moneys in the Fund were state funds, not county funds. *Ehlmann v. Nixon*, 323 S.W.3d 787, 789 (Mo. banc 2010)(the foregoing facts are set forth in this Court's opinion).

In December 2012 St. Louis County and its chief executive, along with other of its officials and employees (collectively and hereinafter County), again attacked the constitutionality of the statutes creating the Deputy Sheriff Salary Supplementation Fund. Legal File (L.F.) p.4. At the time of this Court's opinion in *Ehlmann* there had been no disbursements from the Fund. 323 S.W.3d at 788.

[1] St. Charles County and two of its officials were also named plaintiffs in this earlier litigation.

In the new petition the County alleged that the balance in the Fund as of October 31, 2012 was $15,487,855.40 and that for FY 2013 the General Assembly had appropriated at least $6.4 million to award for grants therefrom. L.F. pp. 12, 145.

Administration of the Fund is assigned to the Missouri sheriff methamphetamine relief taskforce (MoSMART). § 57.278.1 RSMo. L.F. p. 140. MoSMART was originally created by § 650.350 RSMo which specifies that MoSMART will consist of five sitting sheriffs to be appointed by the Governor from a list of twenty names selected by the Missouri Sheriffs' Association board of directors. L.F. 140. The MoSMART Board (hereinafter Board) established criteria by which to evaluate grant applications from county sheriffs. L.F. pp. 8, 54—82, 142. These criteria included, but were not limited to, the available funding and the sustainability of funding. L.F. p. 75. The criteria go on to state: "It is anticipated that the funding requests may exceed the amount of money available, or even a sustainable level of funding."L.F. p. 75.

According to County, the Board reviewed a total of 101 grant applications for FY 2013 which totaled over $11.3 million. L.F. pp. 12, 126, 145. County alleged that the grants awarded by the Board totaled $ 4,575,195.07. L.F. 12, 145. The amount of the County's grant request was $3,049,782.41. L.F. 123. The Count's grant request was based on 1,171 positions. L.F. p. 122.The County's grant request was not approved. L.F. p. 126. The Board "considered the

sustainability of the state fund source, the completeness of the applications and the narrative provided in the application." L.F. p. 126. The County's request was also not approved because the application was not submitted by the Sheriff of St. Louis County as required. L.F. 126. County also alleged that the City of St. Louis (173 positions), St. Charles County (153 positions) and Jefferson County (144 positions) were awarded grants by the Board. L.F. p. 146. In Count IV of its amended petition the County seeks a court order directing the Board to approve its grant application. L.F. p. 151.

County's Brief describes its other claims as being "alternative" to the above. App. Brief p. 10. In Count I the County claimed that the statute was an unconstitutional delegation of legislative authority to the Board. L.F. p. 14. In Count II the County claimed that the Board lacked authority because its members had not been confirmed by the Senate. L.F. p. 15. In Count III the County claimed that the grant criteria adopted by the Board constituted a rule and that the criteria were invalid because the "rule" had not been properly promulgated. L.F. p. 15. In the initial petition the County's essential claim for relief under each of these counts was for a "refund" of all moneys that the County had collected and transferred to the Director of Revenue for deposit in the State Treasury. L.F. pp. 15, 17 & 17.

After the Defendants filed a Motion to Dismiss (L.F. p. 135) the County filed an amended petition. In the amended petition the nature of Counts I—III

remained the same but the relief sought was altered. The County dropped its claim for a "refund" of the moneys collected but retained the request that the trial court enjoin defendants for expending any money from the Fund "except as specifically ordered by this Court." L.F. p. 148, 149, & 150. County also added to Count I a request that the trial court declare that the "County and its sheriff have no duty to continue collecting and remitting the $10 fee for deposit in the" Fund. L.F. p. 148.

In addition, County's amended petition included an allegation that in order to obtain service upon the defendants in this case it had paid the $10 charge that would be deposited in the Fund. L.F. p. 141.

The circuit court granted defendants' motion to dismiss County's petition on the grounds of sovereign immunity and lack of standing. L.F. pp. 166—172. Defendants' motion to dismiss had also raised the grounds of (1) collateral estoppel because the validity of the statute as regards to the collection of the fee and transfer to the State Treasury had already been litigated and (2) lack of jurisdiction for failure to join necessary parties because County's claim that the MoSMART Board's members had not been confirmed by the Senate and that all its prior actions were invalid and void could affect the interests of all county sheriffs to whom grants had been awarded. L.F. pp. 135 & 153.

Standard of Review

The granting of a motion to dismiss is reviewed *de novo*. *Foster v. State*, 352 S.W.3d 357, 359 (Mo. banc 2011). An appellate court is to review the petition to determine if the facts alleged meet the elements of a recognized cause of action or one that might be adopted. *Id*. If the motion to dismiss can be sustained on any ground alleged in the motion, the trial court's ruling will be affirmed. *Id*.

Argument

Introduction

County's brief addresses each of its four counts in a separate point. Defendants believe that such an approach is confusing at best. The issues of lack of standing and sovereign immunity overlap all of County's claims. And County's claims are often inconsistent, not only between the four counts but sometimes within counts. There is often no connection between County's asserted legally protectable interest, the substance of the claim, and the relief sought. For instance, how can an alleged illegal delegation of authority to the Board be remedied by a court ordered expenditure from the Fund?

In the statement of facts County describes Count IV of its petition (judicial review seeking an order approving their grant application) first and then Counts I—III as alternative claims. App. Brief pp. 9—10. But in the original and amended petitions County described Count IV as the alternative to Counts I—III L.F. p. 17 & 150. The latter order probably made sense when the primary relief sought in Counts I—III was the request for a "refund" of moneys that the County had collected and transferred to the State Treasury. Count IV, approval of the grant application, was less significant.

But Count IV in the original petition had incorporated all the allegations relating to Counts I—III. Defendants pointed out in their motion to dismiss that County could state no claim for judicially compelled payment of the County's

grant application if Count IV incorporated the specific allegations that the statute, the Board, and the criteria were all invalid. As a result, in the amended petition Count IV only incorporated paragraphs 1—59, excluding the specific allegations in Counts I—III. Thus, Count IV now does seem to be the primary relief sought and it is the "alternative" Counts I—III that require additional allegations.

Because consideration by Counts—as the County's brief is organized—is overlapping and repetitive, the State believes that it is more logical to address these points by the issues—sovereign immunity and standing.

I.

Dismissal of County's amended petition was appropriate because sovereign immunity barred the monetary relief sought. (In Response to Appellants' Points I – IV).

County's discussion of sovereign immunity is superficial and incomplete. Nowhere does it acknowledge that the monetary nature of the relief it seeks is a factor, much less a crucial one, in considering the State's immunity. In its suggestions regarding the motion to dismiss the County relied upon *Wyman v. Missouri Dept. of Mental Health*, 376 S.W.3d 16 (Mo. App. 2012) for the proposition that sovereign immunity did not prevent the State from being subject to equitable relief. But the County misunderstood *Wyman's* holding. The Court of Appeals specifically noted that: "Because the Department's motion to

dismiss made only a 'generic' immunity argument, we do not decide whether any specific form of equitable relief, or the financial or other consequences of affording particular relief, may implicate sovereign immunity." 376 S.W.3d at 24. In this case, however, the specific form of the equitable relief and the financial consequences thereof were raised and demonstrate that sovereign immunity bars the essential relief that County seeks.

County named as defendants the State of Missouri, the Department of Public Safety, its Director, MoSMART and its members. All of the officials are named in their official capacity. It is axiomatic that a suit naming the State in its own name raises the issue of sovereign immunity. It is the "general rule" that the State may not be sued without its consent. *Fort Zumwalt Sch. Dist. v. State*, 896 S.W.2d 918, 923 (Mo. banc 1995). The Department, as an arm of the State, is also immune. *State rel. Mo. Dept. of Agriculture v. McHenry*, 687 S.W.2d 178, 181 (Mo. banc 1985); *State ex rel. Bd. of Regents of Southwest Missouri State v. Bonacker*, 765 S.W.2d 341, 349 (Mo. App. 1989). Sovereign immunity does not simply bar liability or judgment. It is immunity from suit. *McHenry*, 687 S.W.2d at 181; *State of Ohio v. Missouri State Treasurer*, 130 S.W.3d 742, 744 (Mo. App. 2004).

Moreover, actions against state officials in their official capacities are treated as suits against the State and the immunity available to such officials is the same as that of the State. *Edwards v. McNeill*, 894 S.W.2d 68, 682 (Mo. App.

1995). Thus, even a superficial review of sovereign immunity demonstrates that the State and the Department of Public Safety should be dismissed and that the Director of Public Safety and the MoSMART Board members can raise sovereign immunity as a defense to same extent that the State itself can with regard to particular relief sought.

Although the County has styled both the original and amended petition as one of "declaratory judgment" and equitable relief, monetary relief has been the essential relief sought. The County repeatedly requests court ordered spending from the Fund, either explicitly in Count IV or implicitly in Counts I—III. That some form of a monetary award is the essence of the County's claim is confirmed by the fact that County's argument on its standing is based on an assertion that it has a right to a grant award from the Fund. Appellants' Brief pp. 22, 24, 27-8. Such monetary relief is barred.

Sovereign immunity "was designed to protect the public treasury against the kind of claims sought to be maintained here." *McHenry*, 687 S.W.2d at 182. Although this Court abolished immunity from tort liability in *Jones v. State Highway Comm'n.*, 557 S.W.2d 225 (Mo. banc 1977), it did not abolish or limit "the more general rule of sovereign immunity from suit." *Fort Zumwalt School Dist.*, 896 S.W.2d at 923(recognizing the legislative reinstatement of immunity); *State of Ohio*, 130 S.W.3d at 744. As this Court explained, its decision was "not meant to impose liability upon the state or any of its agencies for acts or

omissions constituting the exercise of a legislative, judicial, or executive function." *Jones*, 557 S.W.2d at 230. Indeed, sovereign immunity has been held to bar monetary relief of all sorts. E.g.,*Fort Zumwalt School Dist.*, 896 S.W.2d at 923 (alleged violation of Hancock Amendment); *Matteson v. Dept. of Revenue*, 909 S.W.2d 356, 360 (Mo. banc 1995)(tax refunds); *Bonacker*, 765 S.W.2d at 349(docket fees); *Richardson v. State Highway & Transportation Comm'n.*, 863 S.W2d 876, 882 (Mo. banc 1993)(costs); *V.M.B. v. Mo. Dental Bd.*, 74 S.W.3d 836, 843 (Mo. App. 2002)(attorney's fees).

In Count IV County requested that the Court order the State defendants to approve its grant application and pay $100 per month plus fringe benefits to all employees listed in the application. L.F. p. 151. According to the County this would amount to over $3 million. L.F. 123. The fact that this claim is disguised as an injunction to approve a particular grant application does not change the fact that it is a monetary award against the State. Indeed, the Court of Appeals, Western District, has recently held that cases ostensibly seeking declaratory and injunctive relief, but with significant financial consequences, were barred by sovereign immunity. *Redmond v. State*, 328 S.W.3d 818 (Mo. App. 2011); *State ex rel Kansas City Symphony v. State*, 311 S.W.3d 272 (Mo. App. 2010). Sovereign immunity is intended to protect the State Treasury from exactly this sort of claim.

A court order granting this relief would also be substantially more than the Board had remaining from its appropriation authority for FY 2013. According to the County, the Board had approved grants totaling almost $4.6 million from an appropriation of approximately $6.4 million. L.F. p. 145. Thus, there was only about $1.8 million remaining in the appropriation. County's own allegations did not demonstrate a viable claim for awarding its grant request.

Even if County's claim were limited to the amount remaining in the appropriation it would still constitute an unwarranted raid on the State Treasury. In considering all of the grant applications the Board was concerned about the long term sustainability of the funding source and, hence, the program. L.F. pp. 75, 126. This was a concern even without County's application for a grant of over $3 million. Excluding County's application, the applications for 100 other counties amounted to approximately $8.3 million—still more that the amount of the appropriation. L.F. p. 134. As a result, the Board denied some applications and reduced many others in amount. L.F. pp. 131-134. Quite apart from the amount involved in a claim against the State, it is this discretion regarding spending that sovereign immunity protects. The essentially monetary claim of Count IV is therefore barred.

This situation is only marginally different with regard to Counts I—III. In its original petition County's requested relief in Counts I—III was for a "refund" of the amounts that it had collected and transferred to the Fund. L.F. pp. 15—

17. While the County dropped this specific request when it filed the amended petition, it retained the request that the court enjoin and restrain defendants from expending moneys from the Fund "except as specifically ordered by this Court." L.F. pp. 148—150. It characterizes this as a mere request to prevent an allegedly illegal expenditure of State moneys. But this is disingenuous at best.

The bottom line of County's requested relief is that the Court assume control of and order some spending from the Fund. The only difference between this and the original petition is that the amended petition's request is simply undefined—by either its amount or its nature. But one cannot overcome sovereign immunity just by being vague.

Moreover, quite apart from sovereign immunity, there is no legal, or even logical, connection between the nature of the claims in Counts I—III and court ordered spending from the Fund. For instance, if §§ 57.278 and 57.280.4 RSMo are unconstitutional as improper delegations of legislative authority, as alleged in Count I, this would provide no basis for the Court to order the Board to award the grant to St. Louis County. Doing so would mean that the Court was making the delegation of legislative authority. If as alleged in Count II, the Board had no authority to act because its members have not been confirmed by the Senate, then again the Court could not order them to approve the grant application. To do so would amount to the Court confirming the members. And if, as alleged in Count III, the criteria for assessing grant applications is an invalid rule, then

the Court could not order approval of the grant. Doing so would have the effect of this Court promulgating the rules to be applied.

The trial court appropriately dismissed the amended petition pursuant to the doctrine of sovereign immunity because the primary relief requested and the alleged injury giving supposed giving County standing are monetary in nature. Alternatively, even if sovereign immunity only necessitates dismissal of the County's monetary claims for relief, there remains the question of the County has standing to litigate the claims asserted. As explained below, dismissal on this basis is also appropriate.

II.

Dismissal of the County's amended petition was appropriate because the County lacked standing. (In response to Appellants' Points I – IV).

Standing is a jurisdictional matter that a court has a duty to consider prior to reaching the substantive issues alleged. If a plaintiff lacks standing the court does not have subject matter jurisdiction and must dismiss the case. *Farmer v. Kinder*, 89 S.W.3d 447, 451 (Mo. banc 2002). In a declaratory judgment action, whether a party has standing to bring a suit depends on whether the plaintiff has "a legally cognizable interest" and "a threatened or real injury." *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011). County bears the burden of establishing that it has standing. *Id*. Because it has no "legally protectable

interest" at stake, the County lacked standing and the action was properly dismissed.

Consideration of the County's standing arguments is equally as confusing as its treatment of the issue of sovereign immunity. The requested declarations of law are logically and legally divorced from the requested relief of a payment from the Fund. And they are also logically and legally divorced from the legally protected interest being asserted. As explained below, the County's lack of standing comes down to the fact that it does not have any right or entitlement to being awarded a grant from the Fund, either as the County or its individual officers, and does not have standing to challenge the Board's award of grants to others.

The County's assertions of standing constitute, in one fashion or another, a claim of a right to receive a grant from the Fund. County repeatedly asserts that the individual officers named in the petition have standing because they have a "right to receive salary and benefit increases" from the Fund. Appellants' Brief pp. 22, 24, 27. County also asserts that it and its officials have standing because they are adversely affected in terms of "their continued ability to employ and retain deputy sheriffs" by the Board's awarding grants to adjacent counties. Appellants' Brief pp. 22, 24, 27-8. But because the County (both itself as well as its officials and employees) has no right or entitlement to a grant under § 57.278, it asserts no legally protectable interest that would give it standing.

County's argument that its individual officers have a right to receive salary supplementation from the Fund indirectly amounts to a claim that the County also has a right to receive a grant. This is a result of the fact that moneys in the Fund are not disbursed to individual deputy sheriffs. In addition, the County's claim that it is a competitor of the adjacent counties in terms of hiring personnel is also a claim that it is entitled to have its grant application approved—at least if grants were awarded to the adjacent counties. But neither the County's claim that it has a right to receive a grant nor that its officers have a right to receive a salary supplement is supported by the factual allegations in the petition.

Instead, County's factual allegations demonstrate that the Fund is a grant program, not a statutorily defined benefit or entitlement. The administration of the Fund was assigned to the Board by § 57.278.1 RSMo. L.F. p. 140. The Board had been created earlier by § 650.350 RSMo to administer grants from a different fund. L.F. p. 150. Section 650.350 was, however, amended to reflect the Board's new duty of administering the Deputy Sheriff Salary Supplementation Fund. L.F. p. 142. While the Fund is "to be used only for the supplementation of salaries and benefits of county deputy sheriffs" there is no allegation that it creates a guaranteed benefit to either deputies or counties. L.F. 142. Reading § 57.278 et seq. and § 650.350 together, it is plain that the Deputy Sheriffs Salary Supplementation Fund is a grant program, just as was the earlier fund that the

Board administered.

The absence of a legal entitlement is confirmed by the County's allegations of the of the Fund's financial situation. The County alleges that the General Assembly appropriated only $6.4 million from the Fund for FY2013 while the balance of the Fund was over $15 million. L.F. p. 145. This demonstrates that the General Assembly intends the Fund to be an ongoing program, not a one-time infusion of money. Moreover, the grant applications for FY2013 requested a total of $11.3 million. The Board could not, even if it wished to, grant every applicant's request. Some grant applications have to be denied, either in total or in part. In fact, counties other than St. Louis County were denied grants. L.F. p. 145. And the requests of many other counties were reduced in the final award, often substantially. L.F. p. 127-30. Thus, the ultimate grant awards are discretionary.

The discretionary nature of the Fund demonstrates that the Fund does not create an entitlement. Similar discretion is the basis for holding that an unsuccessful bidder for a public contract does not have standing to challenge the decision to award it to another. *Pace Construction Co. v. Missouri Highway & Transportation Comm.*, 759 S.W.2d 272, 274-5 (Mo. App. 1988). This is because when a public body has the right to reject any and all bids, the rejection of a bid does not create a vested interest or property right in the rejected bidder. *La Mar Construction Co. v. Holt County, R-II School District*, 542 S.W.2d 568, 570 (Mo.

App. 1976). Awarding grants to other counties does not create an entitlement in St. Louis County.

Simply granting something to one does not establish a legally protectable interest in another who does not receive it. For instance, a taxpayer does not have standing to challenge a tax exemption granted to another. *W.R. Grace & Co.*, 729 S.W.2d at 207. Even if the exemptions granted to others were unconstitutional, the taxpayer litigant would not be entitled to a personal refund. *Id*. And there is no public interest when the litigant challenges tax exemptions to others. *Id*.

Similarly, granting County relief on its claims in Counts II and III (requiring the Board members to be confirmed by the Senate and the criteria to be promulgated as a rule) would not entitle the County to the approval of its grant application because that would not establish that the County had a right to a grant award. This illustrates that the substance of these claims of invalidity is not an adverse effect upon the asserted legal interests. Each claim can be remedied without altering the discretionary nature of the grants from the Fund. It is not the alleged lack of Senate confirmation or failure to properly promulgate the criteria as a rule that resulted in denial of the County's application. Rather, the denial is the result of the very nature of the Fund.

County's claimed status as a competitor that has been adversely affected by the awards to adjacent counties is equally unavailing to establish standing.

And in light of the actual facts alleged, such a conclusion is problematic. The award to St. Louis City was for 173 positions. L.F. p. 146. The award to St. Charles County was for 153 positions. L.F. p. 146. The award to Jefferson County was for 144 positions. L.F. p. 146. But County's grant application was for 1,171 positions. L.F. p. 122. The numbers alone do not indicate that the County has or is in danger of losing significant numbers of officers due to the limited salary supplements to other counties.

Moreover, asserting injury as a competitor does not establish standing. In *Columbia Sussex Corp. v. Missouri Gaming Comm.*, 197 S.W.3d 137 (Mo. App. 2006) the Gaming Commission approved the location of a new casino. An alleged competitor claimed that the Commission's decision was unconstitutional. But the competitor did not have standing to challenge this decision. 197 S.W.3d at 142. In *Schmitt v. City of Hazelwood*, 487 S.W.2d 882 (Mo. App. 1972) the City granted a special land use permit for operating a car wash. The plaintiff had a similar business in close proximity. This was insufficient to establish standing, particularly since his claim of irreparable damage was only "a conclusion, unsupported by factual averments." 487 S.W.2d at 888-9. County's allegations here are equally conclusory. The County alleges only the amounts that were granted to adjacent counties. L.F. p. 146. There is no explicit allegation of facts that would demonstrate that it has been adversely affected in terms of hiring or retaining personnel—no allegation of fact that it has lost or is in danger of losing

personnel or that adjacent counties are luring County's officers away.

Thus, County's attempt to assert standing based upon a claim of entitlement to approval of its grant is not supported by their allegations. The County does not have standing to challenge the grants awarded to other counties.

The County makes one other argument that it has standing—its payment of the new $10 charge when it filed the instant litigation. L.F. 141. But payment of the charge does not demonstrate that County has standing. In its brief, County makes this standing argument only with regard to Count I. Appellants' Brief p. 17. And in its brief County states that Count I seeks only a declaration that it and its sheriff have no duty to continue collecting the $10 charge. Brief p. 17.

First, County's allegation that the statute unconstitutionally delegates legislative power to the Board does not affect any legally protectable interest with regard to its collection of the charge. The County alleges no facts that it has some right not to collect the charge. Nor does it allege facts demonstrating that it has been injured in collecting and remitting the $10 charge. It only alleges that it has remitted moneys to the Fund. L.F. p. 142. But the collection and transfer of the moneys to the State has already been upheld by this Court. *Ehlmann, et al. v. Nixon*, et al, 323 S.W.3d 787(Mo. banc 2010). The moneys are not those of the county. And aside from that, County fails to allege facts that

would show that any interest it has regarding collection of the charge is injured by the alleged improper delegation to the Board regarding making grants from the Fund.

County's argument based on payment of the $10 charge is an unprecedented, backdoor theory of standing. County's alleged injury—payment of the $10 charge—was not incurred until it brought the action claiming that the injury was unconstitutionally inflicted. In the normal course of events, a plaintiff alleges that he has some injury inflicted prior to, and independent of, the filing of the suit to redress the injury.

But plaintiffs' claims have nothing to do with redressing the "injury" from payment of the $10. If plaintiffs prevailed on their claims regarding the validity of the existence of the Board and its actions, the money from the new charge would still be collected and remitted to the State treasurer to be placed in the Fund, *Ehlmann,* 323 S.W.3d 787, even if further grants from the Fund had to await future legislative action.

County's asserted standing based on payment of the charge as a litigant herein is nothing more than an afterthought that was inserted in the amended petition after it realized it could not seek a "refund" of the moneys transferred to the State.

As a result, County fails to demonstrate that it has standing to litigate either the denial of its grant application or the awarding of grants to other

counties.

Conclusion

The dismissal of Appellants' First Amended Petition should be affirmed.

Respectfully submitted,

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Certificate of Service and of Compliance with Rule 84.06(b) and (c)

I herby certify that on August 30, 2013, I electronically filed the foregoing with the Clerk of the Court for the Supreme Court of Missouri by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

The undersigned certifies that the foregoing brief complies with the limitation contained in Rule 84.06(b), and that the brief contains 5,313 words.

/s/ *Robert Presson*
Assistant Attorney General